

A. G. Contract No. KR03-1430TRN  
ADOT ECS File: JPA 03-085  
Project No.: STP-000-6 (165) P  
TRACS: 0940 CN CCN SR185 01C  
Section: Espee Road  
AAR/DOT No.: Grand Canyon Railway  
And Resort / 025-963-S

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
COCONINO COUNTY, ARIZONA

THIS AGREEMENT is entered into 4th February, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COCONINO COUNTY, ARIZONA acting by and through its BOARD OF SUPERVISORS (the "County").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
4. Such project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 26638  
Filed with the Secretary of State  
Date Filed: 02/04/04  
Janice K. Brewer  
Secretary of State

By: Dan D. Greenwald

6. The work embraced in this agreement and the estimated cost is as follows: Upgrade Railroad Crossing (Crossing Surface Upgrade from Timber to Concrete).

Preliminary and Construction Engineering	\$ 15,000.00
Install Flashers and Gates (by railroad forces)	<u>\$ 78,673.00</u>
Total Protection Work	\$ 93,673.00
 Furnish and Install a Concrete Crossing Surface (By railroad forces) Federal Aid Funds @ 100%	 <u>\$126,328.00</u>
Total Project	\$220,000.00
 Federal-aid Funds @ 100% of \$219,191.00	 <u>\$219,191.00</u>
Coconino County funds for Crossing Surface Upgrade from Timber to Concrete	\$ 810.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Grand Canyon Railway Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

### **2. The County will:**

a. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Remove all obstructions or unauthorized encroachments from right-of-way of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from.

c. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County's right of way. In the event of any unauthorized encroachment or improper use, take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, provide maintenance (exclusive of maintenance by the Railroad Company of its facilities), which may include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

f. Regulate as it may by ordinance provide, parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the County for the benefit of the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The County shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The County shall also require its contractors to name the State as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by FHWA, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received, if applicable.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of State and the County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by State and the County at the end of the period for which the funds are available. No liability shall accrue to State and the County in the event this provision is exercised, and State and the County shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Coconino County, Arizona  
Attn: Dale D. Wegner, Jr. P.E.  
Coconino County Engineer  
5600 E. Commerce Avenue  
Flagstaff, AZ 86004

11. In accordance with Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**COCONINO COUNTY, ARIZONA**

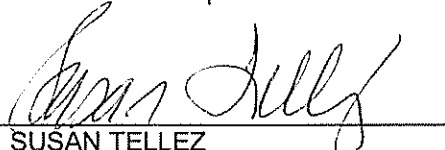
By

  
MATTHEW G. RYAN  
Chairperson of the Board

**STATE OF ARIZONA**

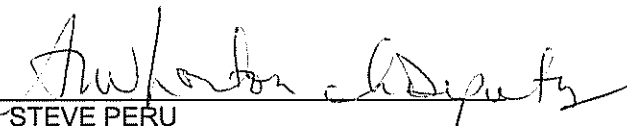
Department of Transportation

By

  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By

  
STEVE PERU  
Clerk of the Board

OFFICE OF THE BOARD OF SUPERVISORS  
COCONINO COUNTY, FLAGSTAFF, ARIZONA  
TUESDAY, DECEMBER 2, 2003

The Board of Supervisors met in Regular Session on Tuesday, December 2, 2003, at 10:00 am in the Board of Supervisors Meeting Room, First Floor, Administrative Center, 219 E. Cherry Avenue, Flagstaff, Arizona.

PRESENT: Chairman Matthew G. Ryan, Supervisors Paul Babbitt, Elizabeth Archuleta, Deborah Hill, and Louise Yellowman; County Manager John Holmes, Deputy Manager/Clerk Steven Peru, Chief Deputy Clerk Anna Whorton, Deputy Clerk Sherry Cornforth; and Deputy County Attorney Richard Vihel.

CALL TO ORDER: the meeting was called to order at 10:00 am by Chairman Ryan.

PLEDGE OF ALLEGIANCE: was led by Chairman Ryan.

CONSENT ITEMS: Item #3, Supervisor Archuleta contributed \$250 from District 2 for a total contribution of \$1,500. It was moved by Supervisor Babbitt, seconded by Supervisor Archuleta, to approve the Consent Agenda with the exception of the revision to Item #3. The Consent Agenda was approved as noted below.

1. Board of Supervisors: Minute approval for Regular Board meeting of November 18, 2003.

2. Warrant Registers:

Run Date	Warrant Number	Computer Register Total
11/20/03	94008154 – 94008380	\$236,825.77
11/25/03	94008383 – 94008729	\$2,092,171.49
12/01/03	94008732 – 94008904	\$97,732.07

An itemized list of the above numbered claims is filed in the official record of the Coconino County Board of Supervisors.

3. Community Initiatives Funding request from District 1 in the amount of \$500, District 2 in the amount of \$250, District 4 in the amount of \$500, and District 5 in the amount of \$250 (for a total of \$1,500) to assist the Flagstaff Symphony in providing families with young children the cultural and educational opportunity of attending Flagstaff's Symphony's Annual performance of the Nutcracker at a special Lollipop Concert.
4. Community Initiatives Funding request from District 1 in the amount of \$2,300 to assist Flagstaff Symphony in providing Fredonia and Grand Canyon children the cultural and educational opportunity of attending Flagstaff's Symphony's Annual performance of the Nutcracker at a special Lollipop Concert, free of charge.
5. Community Initiatives Funding request from District 1 for \$250; District 2 for \$500; District 3 for \$1,000; and from District 4 for \$400 for a total of \$2,150 to the Northern Arizona Book Festival to assist with administrative costs of the 7<sup>th</sup> Annual Book Festival on April 16-18, 2004.

6. Community Initiatives Funding request from District 2 for \$1,000 to Flagstaff Cooperative Preschool to assist with the administration of education, and child development outreach in the Flagstaff Unified School District (FUSD).
7. Community Initiative Funding request from District 2 for \$500 and from District 5 for \$250 for the Flagstaff Hispanic Pioneers aka Nuestras Raices, Incorporated to assist in administrative services in the presentation of El Dia de los Muertos celebration on November 2, 2003.
8. Community Initiatives Funding request from District 2 in the amount of \$500; from District 4 in the amount of \$1,500; and from District 5 in the amount of \$1,000 to Junior Achievement of Arizona, Incorporated to assist with costs associated with presenting governmental and economic education to classes in Flagstaff Unified School District.
9. Resolution 2003 - 75, redeeming the waiver, authorizing the Coconino County Assessor to accept the Affidavit For Tax Exemption and directing the Coconino County Treasurer to refund taxes paid, for Unitarian Universalist Fellowship of Flagstaff, a religious organization located in Flagstaff, Arizona, for Tax Year 2003 and future tax years.
10. Sale of Tax Deeded Properties: Void Sale of 12 parcels and return parcels to sale list: 501-14-060, 501-14-061, 501-18-010, 501-18-021, 501-18-022, 501-40-001, 501-40-007, 501-40-041, 501-61-012, 501-61-013, 501-64-006, 501-64-020.
11. Community Development: Approve Resolution No. 2003 - 76, proclaiming support of the City of Flagstaff Enterprise Zone and approve an Intergovernmental Agreement with the Cities of Page and Williams and the Town of Fredonia to allow Coconino County to act as the administrator of the Coconino County Enterprise Zone for the portions of the Zone that are within the three municipalities.
12. Court Administration: Approve the donation of one portable walk-through magnetometer and two hand-held security wands that were previously used in the Superior Court of Coconino County to the Tuba City Tribal Court.
13. Elections: Approve the Polling Place Agreements for elections to be held in 2004.
14. Facilities: Approve the lease of approximately 1,150 square feet of office space for the Legal Defender from Ice House Associates for a five-year term at a cost of \$16,100 per year.
15. Approve Robertson Management Services, Incorporated to provide project management services for the Sheriff's Search and Rescue project in an amount not to exceed \$36,500 for fiscal year 2003 – 2004.
16. Approve the purchase of computer infrastructure for the Williams Justice Center in the amount of \$36,549 from Calence utilizing State Contract number AD 00018703.
17. Finance: Approve a budget adjustment to allocate an appropriation in the Finance Department to other General Fund departments for expenditures being charged to those departments for unemployment insurance.

18. Health Services: Authorize the first renewal of RFP 2002-101 with Flagstaff Medical Center d/b/a/ Alliance Labs for the provision of laboratory services for FY 2003-2004.
19. Human Resources: Approve the plan document for Flexible Spending Accounts.
20. Public Works: Approve A.G. Contract No. KR03-1430TRN an Intergovernmental Agreement between Coconino County and the State of Arizona, Department of Transportation, for erection of railroad signals at the railroad crossing on Espee Road.
21. Approve A.G. Contract No. KR03-1431TRN an Intergovernmental Agreement between Coconino County and the State of Arizona, Department of Transportation, for erection of railroad signals at the railroad crossing on Pronghorn Ranch Road.
22. Approve the ownership transfer of a ten-wheel dump truck, VIN 4V2SCBCF4KU502725 previously used by the Public Works Department Road Maintenance Division since February 1989, to the City of Williams, Arizona for \$14,000.
23. Approve the Memorandum of Understanding (MOU) for the reconstruction of State Route 179 under the Needs Based Implementation Plan (NBIP).
24. Sheriff's Office: Approve the Financial and Operating Plan, FS Agreement No. 99-LE-11030777-023, for fiscal year 2004 to the Cooperative Agreement between the Coconino County Sheriff's Office and the U.S. Forest Service for Kaibab National Forest and approve the Sheriff as the authorized signer of the Financial and Operating Plan.
25. Approve the Financial and Operating Plan, Coconino NF Agreement #99-CA-11030420-471, for FY 2004 to the Cooperative Agreement between the Coconino County Sheriff's Office and the U.S. Forest Service for Coconino National Forest and approve the Sheriff as the authorized signer of the Financial and Operating Plan.
26. Approve an Intergovernmental Agreement between the City of Flagstaff, Coconino County, and the City of Williams allowing Williams Police Department to share data in the public safety records management system.
27. Superior Court: Renew RFQ 2001-04 with the Guidance Center for the provision of intensive outpatient treatment from December 1, 2003 to November 30, 2004, not to exceed \$54,000.
28. Treasurer: Appointment of Toni Roja as Deputy Treasurer retroactive to October 20, 2003.

ACTION ITEMS:

Coconino County Jail District Board Of Directors: It was moved by Supervisor Hill, seconded by Supervisor Babbitt to resolve as the Coconino County Jail District Board of Directors. Motion carried unanimously.

Award RFP 2004-100 and approve the contract between the Jail District and the Guidance Center for mental health services to jail inmates in the amount of \$56,160 for the period July 1, 2003 through June 30, 2004.

Coconino County Sheriff Joe Richards stated Coconino County is mandated by Federal law to provide general mental health services to Jail inmates. Mental health services include screening, evaluation, counseling and treatment. Richards said the Jail District has the option to renew the contract for two additional one year terms.

It was moved by Director Babbitt, seconded by Director Archuleta, to award RFP 2004-100 to the Guidance Center for mental health services to Jail inmates. Motion carried unanimously.

It was moved by Director Yellowman, seconded by Director Hill to resolve as the Board of Supervisors. Motion carried unanimously.

Pinon County Improvement District: It was moved by Supervisor Hill, seconded by Supervisor Yellowman, to resolve as the Pinon County Improvement District Board of Directors.

Set hearing date of December 16, 2003 at 6:00 pm to hear objections for the Pinon County Improvement District.

Special Districts Coordinator Tony Figlerski stated the District is located south of Campbell Avenue in Timberline Estates subdivision. Approximately thirty-seven (37) acres are included within the District boundaries. On November 4, 2003, the Board of Directors adopted Resolution PCID 2003-1, a Resolution of Intent to proceed with construction, which included acceptance of the District Engineers Estimate. A Notice of Proposed Improvement was mailed to each property owner in the District on November 6, 2003, stating the District's intention. State statute requires that there be a twenty day objection period between adoption of the Resolution of Intention and the Resolution Ordering the Work. The twenty (20) day period ended at 5:00 pm on November 26, 2003. During this period an objection was received. The objection filed constitutes an objection to the extent of the District and therefore the County is required to set a hearing on the objection and mail a notice of said hearing to only those who filed a written protest or objection at least 10 days prior to the hearing. Based on a hearing date of December 16, 2003, notices will be mailed out on December 5, 2003. Figlerski said he will send a cover letter giving a status update to all property owners within the Pinon County Improvement District.

Deputy County Manager/Clerk of the Board Steve Peru stated no additional objections can be heard, as the deadline to file objections has passed.

It was moved by Director Archuleta, seconded by Director Yellowman, to set a hearing date of December 16, 2003 at 6:00 pm to hear the objection to the Pinon County Improvement District. Motion carried unanimously.

It was moved by Director Yellowman, seconded by Director Hill, to resolve as the Board of Supervisors. Motion carried unanimously.

Rio Arroyo County Improvement District: It was moved by Supervisor Hill, seconded by Supervisor Yellowman, to resolve as the Rio Arroyo County Improvement District Board of Directors.

Set hearing date of December 16, 2003 at 6:00 pm to hear public comment concerning the assessment methodology and assessment diagram showing all lots and parcels to be assessed

with their assigned assessment number and location of work for the Rio Arroyo County Improvement District.

Special Districts Coordinator Tony Figlerski stated that revisions were made to the proposed assessment diagram and methodology at a work session held November 10, 2003. On November 17 a survey was sent to all property owners in the Rio-Arroyo County Improvement District to solicit input on the assessment methodology. Mr. Figlerski recommended a hearing date of December 16, 2003, at 6:00 to hear the public input concerning the assessment methodology for the Rio Arroyo County Improvement District. Notice of the meeting will be sent to all property owners of record.

It was moved by Director Hill, seconded by Director Archuleta, to set a hearing date of December 16, 2003 at 6:00 pm to hear public input concerning the Assessment Methodology for the Rio Arroyo County Improvement District. Motion carried unanimously.

It was moved by Director Yellowman, seconded by Director Hill, to resolve as the Board of Supervisors. Motion carried unanimously.

Consideration of comments received following Title III 45 day comment period (ended midnight 11/15/2003).

Deputy County Manager/Clerk of the Board Steve Peru acknowledged that the 45 day comment period for Title III, Secure Rural Schools and Community Self Determination Act of 2000, funding has passed and during that comment period the County received no comments. A three day advertisement in the Daily Sun included a list of the proposed projects. Peru stated the 45 day comment period satisfied the State statute relating to public notice. Funding of the projects can now proceed.

It was moved by Supervisor Babbitt, seconded by Supervisor Archuleta, to acknowledge the end of the 45 day comment period and to fund the Title III, Secure Rural Schools and Community Self Determination Act of 2000, projects. Motion carried unanimously.

Consideration of: (1) A wording change to Personnel Policy 4.9 ADMINISTRATION OF THE EMPLOYEE APPEALS BOARD to provide for five members of the Board with up to three alternate members of the Boards. (2) Recommend appointment of two of the following applicants Melissa Setren, Joseph Harris, and Tom Krause to serve on the Employee Appeals Board for four-year terms, which end on December 1, 2007 and appoint one as an alternate member of the Board.

Human Resources Director Jane Emberty recommend changing the wording to Coconino County Personnel Policy 4.9, Administration of the Employee Appeals Board, to allow for five Board members plus up to three alternate Board positions. The volunteers in the alternate positions would be called upon in the event a Board member was unable to serve during an appeal due to a scheduling conflict or potential conflict of interest. Emberty stated all applicants are interested in serving. Board members are not required to be appointed from any one District.

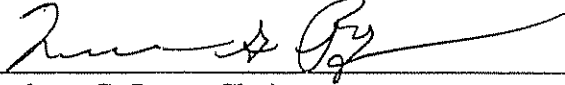
It was moved by Supervisor Babbitt, seconded by Supervisor Archuleta, to approve a change to the Coconino County Personnel Policy 4.9, Administration of the Employee Appeals Board, to

allow for a five member Board and up to three alternate Board positions. Motion carried unanimously.

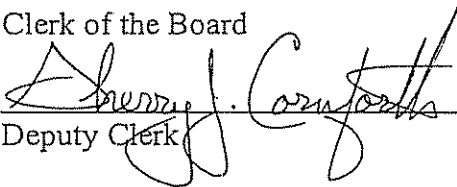
It was moved by Supervisor Archuleta, seconded by Supervisor Hill, to appoint Melissa Setren and Joseph Harris to the Employee Appeals Board and Tom Krause as an alternate for four year terms ending on December 1, 2007. Motion carried unanimously.

There being no further business, the meeting adjourned at 10:35 am.

COCONINO COUNTY BOARD OF SUPERVISORS

  
\_\_\_\_\_  
Matthew G. Ryan, Chairman

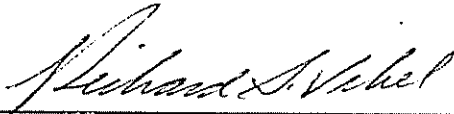
ATTEST:  
Clerk of the Board

  
\_\_\_\_\_  
Deputy Clerk

APPROVAL OF THE COCONINO COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and COCONINO COUNTY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 26th day of NOVEMBER, 2003

  
\_\_\_\_\_  
Deputy County Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

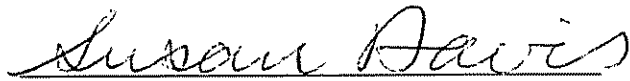
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-1430TRN (**JPA03-085**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED 1-28, 2004.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:dgr  
Attachment  
827967